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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Amendment of Parts 2 and 15 of the Commission's Rules to Further Ensure That Scanning Receivers Do Not Receive Cellular Radio Signals	)	ET Docket 98-76 RM-9022

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JUL 27 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

REPLY COMMENTS OF TANDY CORPORATION

Tandy Corporation ("Tandy"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, submits these Reply Comments in response to the captioned Notice of Proposed Rulemaking ("NPRM") released on June 3, 1998.

As Tandy detailed in its Comments in this proceeding, scanning receivers ("scanners") are used by law abiding consumers to monitor police, fire, and rescue transmissions, weather notifications, and sporting event communications. Scanners also are critical to the work of a number of important volunteer groups, including police auxiliary and volunteer firefighter units, storm spotter organizations, and disaster communications volunteers. To be certain, the vast majority of Americans who use and enjoy scanners do so strictly within the limits of the law.

For this reason, Tandy opposes the Comments of AT&T Wireless Services, Inc. ("AWS") and the Cellular Telecommunications Industry Association ("CTIA") regarding the adoption of a new definition of "scanning receiver" for the Commission's Rules. Specifically, AWS and CTIA urge the Commission to replace its

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existing definition of "scanning receiver" with an unrelated provision set forth in the criminal statutes of Title 18 of the United States Code, 18 U.S.C. § 1029(e)(8). According to CTIA:

> The Commission should modify its definition of "scanning receiver" to track the definition Congress recently adopted in the Wireless Telephone Protection Act of 1998 . . . . The use of this statutory definition would complement the U.S. code provisions that relate to scanning receivers, and eliminate the need for special treatment of cellular transceivers that can be used in a scanning mode.[1]

Similarly, AWS contends that, if it adopts the Section 1029(e)(8) definition, "[t]he Commission can then remove special categories of receivers from broad definition *[sic]* on a case by case basis as it deems necessary."[2] Tandy opposes these suggestions for a number of reasons.

First, Tandy notes that the definition proffered by AWS and CTIA was not adopted in full as part of the recent Wireless Telephone Protection Act, nor was the provision intended by Congress to address the lawful scanners at issue in this proceeding. As part of the Communications Assistance for Law Enforcement Act ("CALEA") passed in 1994, Congress made it a crime to possess a "scanning receiver," which it defined as "a device or apparatus that can be used to intercept a wire or electronic communication in violation of chapter 119."[3] In the

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[1] CTIA Comments at 2-3 (footnote omitted).

[2] AWS Comments at 7.

[3] CALEA, Pub. L. No. 103-414, § 206, 108 Stat. 4279, 4291-92 (1994).

1998 Wireless Telephone Protection Act, Congress added only the following language to the end of the existing definition: "or to intercept an electronic serial number, mobile identification number, or other identifier of any telecommunications service, equipment, or instrument."[4] On its face, therefore, this provision has nothing to do with the lawful scanners enjoyed by millions of Americans.

Indeed, contrary to the suggestion of CTIA, the legislative history of CALEA makes plain that Section 1029(e)(8) does not "relate to scanning receivers" that are the subject of this proceeding. As explained in the House Report that accompanied CALEA:

> SECTION 9.-CLONE PHONES. This section amends the counterfeit access device law to criminalize the use of cellular phones that are altered, or "cloned," to allow free riding on the cellular phone system. Specifically, this section prohibits the use of an altered telecommunications instrument, or a scanning receiver, hardware or software, to obtain unauthorized access to telecommunications services for the purposes of defrauding the carrier. A scanning receiver is defined as a device used to intercept illegally wire, oral or electronic communications. The penalty for violating this new section is imprisonment for up to fifteen years and a fine of the greater of $50,000 or twice the value obtained by the offense.[5]

Thus, the purpose of these CALEA provisions was to combat "free riding on the cellular phone system" through the use of "clone phones." Plainly, Congress was not addressing the quite

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[4] Wireless Telephone Protection Act, Pub. L. No. 105-172, § 2, 112 Stat. 53, 54 (1998).

[5] H.R. Rep. No. 827, 103d Cong., 2d Sess. 31 (1994), reprinted in 1994 U.S.C.C.A.N. 3489, 3511 (emphasis added).

different matter of popular scanners that are used and enjoyed by law-abiding volunteer organizations and consumers, nor did Congress undertake to "define" lawful scanners by outlawing "scanning receivers" in 1994.

More fundamentally, AWS and CTIA never mention that the equipment defined in Section 1029(e)(8) is outlawed earlier in the very same statutory provision. Section 1029(a)(8) makes it a crime to "use[], produce[], traffic[] in . . . or possess[] a scanning receiver."[6] In contrast, the popular scanners that are the subject of this proceeding are quite legal. Obviously, it would be nonsensical for the Commission to define legal scanners as devices that are illegal under federal criminal law, yet that would be the result if the Commission followed the advice of AWS and CTIA.

For these reasons, the Commission should not replace its existing Part 15 definition of "scanning receiver"[7] with the unrelated criminal provision from Section 1029(e)(8), particularly if the Commission's goal is simply to "close any perceived loop-holes" in the Part 15 language.[8] Section 1029(e)(8) was enacted to criminalize quite different equipment than is the subject of this proceeding, and Congress plainly did not intend that CALEA would have anything to do with the legal scanners enjoyed by millions of Americans. Indeed, though the

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[6] 18 U.S.C. § 1029(a)(8).

[7] 47 C.F.R. § 15.3(v).

[8] NPRM at ¶ 15.

bulk of Section 1029(e)(8) has been part of Title 18 for nearly four years, the Commission itself has never once identified the provision as being relevant to legal commercial scanners. At bottom, Section 1029(e)(8) has no place in the Commission's Rules addressing the popular scanners that are the subject of this proceeding.

Instead, if the Commission believes that its existing Part 15 definition of "scanning receiver" must be modified to "close any perceived loop-holes," Tandy urges the Commission to make only those limited amendments to the existing definition that are necessary for that purpose. As noted in its Comments, Tandy believes that the issue of illegal modifications to legal scanners is not related to the definition of "scanning receiver" in the Commission's Rules, and amending that definition may have little impact on the issue at hand. As a result, the Commission should proceed cautiously if it elects to make any such amendments. Quite plainly, what the Commission should not do is to replace its existing definition with an unrelated provision from the United States criminal code.

Finally, though Tandy fully supports the Commission's efforts to curtail the illegal modification of legal scanners, Tandy urges the Commission to consider that the privacy of Cellular Service transmissions can never be fully guaranteed without meaningful encryption. Indeed, determined individuals with sufficient time and resources most likely will always be able to intercept wireless communications that are not encrypted. Encrypted communications, on the other hand, are much more

difficult to intercept. For these reasons, Cellular Service providers should be encouraged (whether by regulation or by market forces) to encrypt wireless transmissions as a way to share in the burden of protecting the privacy of their subscribers.

CONCLUSION

Tandy fully supports the efforts of the Commission to curtail the illegal modification of scanners to receive Cellular Service transmissions. Tandy urges the Commission to adopt rules for this purpose consistent with its Comments and Reply Comments in this proceeding.

Respectfully submitted,

TANDY CORPORATION

By: _____

John W. Pettit
Mark F. Dever
DRINKER BIDDLE & REATH LLP
901 Fifteenth Street, N.W.
Suite 900
Washington, DC 20005
(202) 842-8800

Its Attorneys

Dwayne Campbell
Manager, Regulatory Affairs
RadioShack, a Division of
Tandy Corp.
1300 One Tandy Center
Fort Worth, TX 76102

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CERTIFICATE OF SERVICE

I, Patricia A. Lee, certify that true and correct copies of the foregoing Reply Comments of Tandy Corporation were sent by United States mail, first-class postage pre-paid, on July 27, 1998, to the following:

Michael L. Ardai
15 Green Street, No. 2
Brookline, MA 02446

Jacob Brodsky
1371 Woodbine Road
Woodbine, MD 21797

Michael F. Altschul
Randall S. Coleman
Cellular Telecommunications
Industry Association
1250 Connecticut Avenue, NW
Suite 200
Washington, DC 20036

George A. Hanover
Gary Klein
Consumer Electronics
Manufacturing Association
2500 Wilson Boulevard
Arlington, VA 22201

David Alkire Smith
530 Hollywood Drive
Monroe, MI 48162-2943

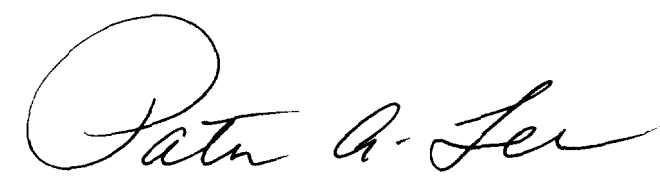
Kenneth Woo
827 North Kaspar Avenue
Arlington Heights, IL 60004

James R. Haynes
Vice President Engineering
& Regulatory Affairs
Uniden America Corporation
216 John Street
P.O. Box 580
Lake City, SC 29560

Gregg P. Skall
Pepper & Corazzini LLP
1776 K Street, NW
Suite 200
Washington, DC 20006

Douglas I. Brandon
Roseanna DeMaria
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, NW
4th Floor
Washington, DC 20036

Bell Atlantic Mobile, Inc.
John T. Scott, III
Crowell & Moring LLP
1001 Pennsylvania Ave, NW
Washington, DC 20004



Patricia A. Lee